APPENDIX 1.

AMENDMENT XIV.

1. ; nor shall any state deprive any person of life, liberty or property without due process of law.

APPENDIX A.

Statutes Involved.

Section 370, Probate Code of California, Contests Before Probate:

"§ 370. *Filing contest; citation; demurrer; answer*

"Any person interested may contest the will by filing written grounds of opposition to the probate thereof at any time before the hearing of the petition for probate, and thereupon a citation shall be issued directed to the heirs of the decedent and to all persons interested in the will, including minors and incompetents, wherever residing, directing them to plead to the contest within 30 days after service of the citation, which shall be made personally or by publication in the manner provided by law for the service of summons in civil actions. Any person so served may demur to the contest upon any of the grounds of demurrer available in civil actions. If the demurrer is sustained, the court may allow the contestant a reasonable time, not exceeding 10 days, within which to amend his contest. If the demurrer is overruled, the petitioner and others interested within 10 days after the receipt of written notice thereof, may jointly or separately answer the contest."

Section 374, Probate Code of California, Contests Before Probate:

§*374. Perpetuation of testimony*

"The testimony of each subscribing witness who has testified must be reduced to writing, signed by him and filed, and shall be admissible in evi-

dence in any subsequent contest of the will if the witness has died or has permanently removed from the state."

Section 380, Probate Code of California, Contests After Probate:

"*§380. Parties who may contest after probate; limitation of time; petition*

"When a will has been admitted to probate, any interested person, other than a party to a contest before probate and other than a person who had actual notice of such previous contest in time to have joined therein, may, at any time within six months after such probate, contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate be revoked."

Section 1230, Probate Code of California, Rules of Procedure:

"*§1230. Trial rules; judgments*

"All issues of fact joined in probate proceedings must be tried in conformity with the requirements of the rules of practice in civil actions. The party affirming is plaintiff, and the one denying or avoiding is defendant. When a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, must settle and frame the issues to be tried. If no jury is demanded, the court must try

the issues joined, and sign and file its decision in writing, as provided in civil actions. Judgment on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions."

Section 1233, Probate Code of California, Rules of Procedure:

"§*1233. Applicability of Code of Civil Procedure Part 2; evidence in uncontested proceedings; evidence of subscribing witnesses*

"Except as otherwise provided by this code or by rules adopted by the Judicial Council, the provisions of Part 2 of the Code of Civil Procedure[1] are applicable to and constitute the rules of practice in the proceedings mentioned in this code with regard to trials, new trials, appeals, and all other matters of procedure.

Section 1240, Probate Code of California, Rules of Procedure:

"§ *1240. Appealable orders*

"An appeal may be taken to the Supreme Court from an order granting or revoking letters testamentary or of administration; admitting a will to probate or revoking the probate thereof; . . ."

Section 2016(a), Code of Civil Procedure of California:

"§ *2106. Depositions pleading action*

Text of section until Jan. 1, 1967

Section 2034, Code of Civil Procedure of California:

"§*2034. Refusal to make discovery; consequences*

"*(b) (1) Refusal to obey subpoena or order; contempt.* The court may punish as a contempt

(i) the refusal of any person to obey a subpoena issued by that court to attend a deposition or to be sworn as a witness, or (ii) the refusal of any person to attend a session of court (either personally or by his attorney) after having been directed to attend in the manner provided in subdivision (a) of this section, or (iii), the refusal of any person to obey any order made by the court under subdivision (a) of this section.

"*(2) Other consequences.* If any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee or managing agent of any such party or person refuses to obey an order made under subdivision (a) of this section, or if any party or any officer or managing agent of a party refuses to obey an order made under Sections 2019, 2061 or 2062 of this code, the court may make such orders in regard to the refusal as are just, and among others the following:

"(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contests of the paper, or the physical or mental or blood condition of the person sought to be examined, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order:

"(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items

of testimony, or from introducing evidence of the physical or mental or blood condition of the person sought to be examined;

"(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

"(iv) An order requiring the disobedient party or the attorney advising such disobedience to pay to the party obtaining an order under this section the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

"(v) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental or blood examination;

"(vi) Where a party has failed to comply with an order under subdivision (a) of Section 2032 of this code requiring him to produce another for examination, such orders as are listed in (i), (ii), and (iii) of this subdivision of this section, unless the party faling to comply shows that he is unable to produce such person for examination.

"*(c) Expenses on refusal to admit.* If a party, after being served with a request under Section 2033 of this code to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any

such matter of fact, he may apply to the court in the same action for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. If the court finds that there were no good reasons for the denial and that the admissions sought were of substantial importance, the order shall be made.

"*(d) Failure of party to attend or serve and file answers.* If a party or a person for whose immediate benefit the action or proceeding is prosecuted or defended or anyone who at the time the deposition is set is an officer, director, or managing agent of any such party or person willfully fails to appear before the officer who is to take his deposition, after said party or his attorney has been served with a proper notice in accordance with the provisions of subdivision (a) (4) of Section 2019 of this code, or if a party or an officer or managing agent of a party willfully fails to serve *and file* answers to interrogatories submitted under Section 2030 of this code, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose such other penalties of a lesser nature as the court may deem just, and may order that party or his attorney to pay to the moving party the reasonable expenses in making such motion, including reasonable attorney's fees."

APPENDIX B.

Admission of Will to Probate.

Superior Court of the State of California, for the County of Los Angeles. Dept. 64.

Date: 3-31-64.

Newcomb Condee Judge.

R. D. Gaddis Deputy Sheriff.

P. N. Bowen, Deputy Clerk.

B. Wallace Reporter.

Estate of Marcellus L. Joslyn, etc., Dec'd. 471 032.

NATURE OF PROCEEDINGS:

Matters continued to this date:

(Petn. Probate Will, etc.; Contest) come on for hearing, with counsel appearing as before. Contestant moves for dismissal of his contest, pursuant to his written Request for Dismissal, heretofore filed. Motion is resisted by proponent. After argument, the Court denies said motion. Contestant's motion for a further continuance is denied.

Mary R. Shoff Carey, Margaret J. Middlewood, Mary Hottle and Robert D. Macdonald are sworn and testify for proponents.

The Court finds that prima facie proof of the will has been made and that the will should be admitted to probate. Contestant offers no evidence.

Will is admitted to probate, (date June 29, 1962), Letters Testamentary to issue to Robert D. Macdonald as Executor. Bond $15,000,000/30,000,000. Counsel is directed to prepare findings and decree accordingly.

P. N. Bowen.

APPENDIX C.

In the Court of Appeal of the State of California, Second Appellate District.

Minutes of May 11, 1967.

Division Two.

Estate of Joslyn, Civil No. 31472.

The Court:

Motion to augment record denied. Motions to dismiss appeals are granted.

APPENDIX D.

Superior Court of the State of California for the County of Los Angeles. Department 9.

Court convened at 1:30 P.M. Oct. 5, 1965, present Hon. Donald R. Wright, Judge; W. J. Mason, Deputy County Clerk; L. White, Deputy Sheriff; W. H. Davis, Reporter; and the following proceedings were had:

328-471032 JOSLYN, MARCELLUS L., etc.
Not of mo for ord dismissing Will Contest & for other appropriate relief C.C.P. 2434; Memo of Pts & auth. & declaration in support thereof; Declaration in support of & ord shortening time

2-C 10/1—3

Attorney (s): Kindel & Anderson

Petition Granted.